IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 09 .11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal Nos.271/96, 924, 1026 & 1009/06
and Writ Petition No.4681 of 1997 and
WAMP No.3874 of 1996 and MP Nos.1 of 2006

W.A. No.271 of 1996:-

1. The Director of Medical Education,
Chepauk, Madras-5.

2. The Government of Tamil Nadu
Rep. by its Secretary to Government,
Health Department, Madras-9.

3. The Secretary,
P.G. Selection Committee,
Kilpauk Medical College Hospital,
Sabarmathi Hostel,
Kilpauk, Madras-10. ... Appellants/Respondents 1 to 3

vs.

1. Dr.M.Ilango ... Respondent/Petitioner

2. Dr.S.Cynthia

3. Dr.R.Parthiban

4. Dr.M.R.Chitra

5. The Principal,
Perunthurai Medical College,
Perunthurai.

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6. The Institute of Road
Transport Corporation

rep. by its Director. (R-5 and
R-6, impleaded as per order
dt.15.3.96) ... Respondents/Respondents

W.A. No.924 of 2006:-

A. Prabhakaran ... Appellant/5th Respondent
Impleaded as per order of this
Court dated 05.07.2006 made in
MP NO. 2/06

vs.

1. S.Gobu ... Respondent/Petitioner

2. The Government of Tamil Nadu,
Rep. by the Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai-600 009.

3. The Selection Committee for
Higher Speciality Courses
M.Ch.Surgical Gastroenterology,
Rep. by its Secretary,
162, E.V.R. Periyar High Road,
Kilpauk, Chennai-10.

4. The Director of Medical Education,
Chennai-600 010.

5. The Dean, Perundurai Medical College,
Perundurai, Erode District. ... Respondents/Respondents 1 to 4

Writ Appeal No.1009 of 2006:-

1. The Government of Tamilnadu,
rep. by the Secretary to Government,
Health and Family Welfare Dept,
Fort St. George, Chennai 600 009.

2. The Selection Committee for
Higher Speciality Courses M.Ch
Surgical Gastroenterology rep.
by its Secretary,

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162, EVR Periyar High Road,
Kilpauk, Chennai 10.

3. The Director of Medical Education,
Kilpauk, Chennai 600 010. ... Appellants/Respondents
1 to 3

vs.

1. Dr.S.Gobu .. Respondent/Petitioner

2. The Dean, Perundurai Medical College,
Perundurai, Erode District.

3. Prabakaran ... Respondents/Respondents
4 to 5

Writ Appeal No.1026 of 2006:-

The Dean,
Perundurai Medical College,
Perundurai, Erode District. ... Appellant/4th Respondent

vs.

1. S.Gopu ... Respondent/Petitioner

2. The Government of Tamilnadu,
rep. by the Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai-9.

3. The Selection Committee for
Higher Speciality Courses,
M.Ch.Surgical Gastroenterology,
rep. by its Secretary,
162, EVR Periyar High Road,
Kilpauk, Chennai-10.

4. The Director of Medical Education,
Chennai-5.

5. Prabakaran ... Respondents/Respondents 1 to 3 and 5

W.P. No.4681 of 1997:-

The Institute of Road Transport
Perundurai Medical College and
Hospital Doctors and Teaching
Staff Association, Perundurai,

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Regd. No.82/96, rep. by its
President Dr. N.V.Mohan. ... Petitioner

vs.

1. The Government of Tamil Nadu,
rep. by its Secretary,
Health and Family Welfare Department,
Fort St. George, Chennai-9.

2. The Selection Committee for
Postgraduate Diploma/Degree/M.D.S.
Courses in Tamil Nadu Government
Medical/Dental Colleges 1997-98,
rep. by its Secretary, Sabarmathi
Hostel, Kilpauk, Chennai-10.

3. The Director of Medical Education,
Chepauk, Chennai 600 005.

4. The Dean, Perundurai Medical College,
Perundurai-53, Periyar District. ... Respondents

Appeals against the order of the learned single Judges, dated 10.01.1996 and 05.07.2006, made in W.P. Nos.9106 of 1995 and 20916 of 2006. Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the respondents culminated in the selection of candidates under service quota for admission to the Post Graduate-Decree course M.S. Opthalmology and quash the selection of such open and Backward Class Service Candidates who obtained marks less than 64.15 marks in the Entrace Examination by the respondents for admission to the Post Graduate Degree Course M.S. Opthalmology published in THE HINDU dated 12th Judge 1995 and consequentially direct the respondents to admit the petitioner, Entrance Examination Number 100682, who has secured 64.15 marks in the Entrance Examination in the resultant vacancies secrued in the P.G. Degree Course M.S. Opthalmology in the Government Medical College (WP NO. 9106/95)

2) to issue a writ of Mandamus directing the respondents to consider the petitioner as a Service candidate for P.G. Degree in Higher Speciality Courses M.Ch Gastroenterology for the academic year 2006-2007 and consequently direct the respondents to select and admit the petitioner to the said course respectively (WP NO. 20916/06)

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W.P. No.4681 of 1997 filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus, directing the respondents to select and admit the members of the petitioner association treating them as service candidates for PG Degree/Diploma/MDS Courses respectively from the academic year 1997-98 onwards provided they satisfy other requirements of selection.

Mr.M.Sekar, Special Government Pleader, for Appellant in WA Nos.271 of 1996 and 1009 of 2006 and for respondents 2 to 4 in WA Nos.924 and 1026 of 2006 and for R-1 to R-3 in WP No.4681 of 1997.

Ms.Jebi Mather Hishan for M/s.Gladys Daniel for Appellant in WA No.924 of 2006 and for R3 in WA No.1009 of 2006 for R5 in WA No.1026 of 2006.

Ms.Kala Ramesh for Appellant in WA No.1026/06 and for R2 in WA 1009/06, R5 in WAs.271/96 & 924 of 2006 and R4 in WP 4681 of 1997

Mr.R.Gandhi, Senior Counsel for Mr.R.G.Narendhiran for Petitioner in WP 4681 of 1997 and for R6 in WA.271 of 1996 and for R1 in WA Nos.1009, 1026 & 924 of 2006.

Mr.V.Sankaranarayanan for R1 in WA.271 of 1996.

No Appearance for R2 to R4 in WA No.271 of 1996.

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Common Judgment

(Judgment of the Court, delivered by P.SATHASIVAM, J.)

Writ Appeal No.271 of 1996 is by the Director of Medical Education; Health Department, Government of Tamil Nadu; and the P.G. Selection Committee, Kilpauk Medical College Hospital; as against the order of a learned single Judge, dated 10.01.1996, made in WP No.9106 of 1995, in and by which, the learned Judge, after finding that Perundurai Medical College (in short PMC) is one which is to be considered for the purpose of admission as a college coming under the control of the State Government, allowed the Writ Petition.

2. Aggrieved by the order of another learned single Judge, dated 05.07.2006, made in WP No.20916 of 2006, R-5 therein, viz., Prabakaran, has filed W.A. No.924 of 2006. Health and Family Welfare Department, Government of Tamil Nadu; the Selection Committee for Higher Speciality Courses, Kilpauk, Chennai-10; and the Director of Medical Education, Chennai-10, have filed WA No.1009 of 2006. The Dean, Perundurai Medical College, Erode, has

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filed W.A. No.1026 of 2006.

3. The Institute of Road Transport, Perundurai Medical College and Hospital Doctors and Teaching Staff Association, through its President, filed WP No.4681 of 1997, seeking for the issuance of a writ of mandamus, directing the respondents to select and admit the members of the petitioner association treating them as service candidates for PG Degree/Diploma/MDS courses respectively from the academic year 1997-98 onwards provided they satisfy other requirements of selection.

4. Since the issue involved in these matters is one and the same, they are being disposed of by the following common Judgment.

5. Brief facts relating to the filing of WA No.271 of 1996 are as follows:-

One Dr.M.Elango filed W.P. No.9106 of 1995 seeking for the issuance of a writ of certiorarified mandamus to call for the records relating to the selection of candidates under Service Quota for admission to the Post Graduate Degree Course in M.S. Opthalmology, quash the selection of such open and Backward class service candidates, who have obtained marks less than 64.15 in the entrance examination, and direct the respondents to admit the writ petitioner who had secured 64.15 marks in the resultant vacancies. According to Dr.Elango, he belongs to Backward Class and is a Doctor possessing MBBS Degree. He was appointed as a Tutor in the Institute of Road Transport (IRT), Perundurai Medical College and Hospital. According to him, the said Institute had been set up by the Government of Tamil Nadu in 1976 for conducting research, Managerial and Supervisory training. The State Transport Corporations (STCs) - undertakings of the Government of Tamil Nadu are contributing for the maintenance of the IRT. He pointed out that in 1983, the Government, in the Assembly, announced that a college to impart professional courses would be started and managed by the IRT for the benefit of the children of the employees of the STCs and for the said purpose, the STC would contribute out of their earnings and a matching contribution would be made from the workers' welfare fund. The employees of the STCs represented to the Government to start a Medical College for the benefit of their children. For the purpose of starting a Medical College at Perundurai, Ramalingam Tuberculosis Sanatorium, Perundurai, was taken over by the Government along with its buildings and other infrastructural facilities and handed over to the I.R.T. to start the Medical College. The Director of Medical Education (DME), Madras, issued the prospectus for admission to P.G. Degree/Diploma/M.D.S. Courses in the Government Medical/Dental Colleges in Tamil Nadu for 1995-96. As per the eligibility criteria fixed in the prospectus, candidates possessing M.B.B.S. Degree and registered with the Medical Council are eligible to

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apply for various post graduate degree/diploma courses imparted in Government Medical Colleges in the State of Tamil Nadu.

The petitioner fulfilled all the eligible criteria and applied for admission to the Post Graduate Degree Course (MS-Opthalmology). According to him, he falls within sub-Regulation 12 (c)(iv) as a service candidate. In the previous years, the respondents reckoned PMC & Hospital as an organisation and institution of Government of Tamil Nadu and selected Doctors serving in the said Institution as service candidates for admission to various P.G. Courses. However, the petitioner was denied admission to P.G. Degree Course, considering him as non-service candidate, which is illegal and improper.

The learned Judge, after considering the policy of the Government, which was announced in the Assembly, constitution of the IRT and PMC, the scope and activities of the Institution, selection process, conditions stipulated in the prospectus for admission, regulations etc., concluded that PMC is one which is to be considered for the purpose of admission as a college coming under the control of the State Government and consequently directed the respondents therein to select and admit the petitioner in M.S. Opthalmology Post Graduate Course for the academic year 1995-96 itself. Aggrieved by the said Order, the respondents therein preferred Writ Appeal No.271 of 1996.

6. Now, let us consider the case of the petitioner in W.P. No.20916 of 2006, the order passed by the learned single Judge and the 3 Writ Appeals filed by the aggrieved respondents.

Dr.S.Gobu, who passed M.B.B.S. Degree in the year 1986 in Coimbatore Medical College and was appointed as Medical Officer at Ramalingam Tuberculosis Sanatorium in Perundurai Medical College, Erode District, filed W.P. No.20916 of 2006 for the issuance of a writ of mandamus, directing the Government, Selection Committee for Higher Speciality Courses, Director of Medical Education and Dean, PMC, to consider him as a service candidate for P.G. Degree in Higher Speciality Courses – M.Ch Gastroenterology for the academic year 2006-2007 and consequently direct the respondents to select and admit him to the said course. According to him, his name was sponsored by the Employment Exchange and he was selected by the Selection Committee consisting of Director of Medical Education, Director of the Institute of Road Transport and the then Superintendent of the said Ramalingam Tuberculosis Sanatorium. He was regularised in the year 1992 and he put in more than 15 years of service in PMC. He is also a member of the IRT, PMC & Hospital Doctors and Teaching Staff Association, Perundurai.

Pursuant to the instructions given by the Government, the Director of Medical Education invited applications for admission to various courses of PG/Higher Speciality Courses for the academic years 2006-2007. The petitioner being employed in PMC, which is an undertaking of the Government of Tamil Nadu, is entitled to be considered for selection to P.G./Higher Speciality

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Course for the 50% seats reserved for service candidates. Though his application was forwarded and recommended as service candidate, according to him, he was not considered as service candidate but as a private candidate.

In the year 1993, when he was serving in PMC, he opted to do his P.G. Degree in M.S. General Surgery and applied for the same under the service quota. He was considered for admission to P.G. Degree in Ortho in the year 1993. Subsequently, in the year 1994, he was given admission for M.S. General Surgery as service candidate and he continued his studies. He completed the same in the year 1997. On completion of the P.G. Degree, he continued to serve in PMC as Tutor in the Department of General Surgery, and subsequently, he was promoted to the post of Assistant Professor in the same Department on 01.10.1998. He is currently working as Associate Professor in the said College. While so, he wanted pursue P.G. Higher Speciality Courses in Surgical Gastroenterology. He appeared for the entrance examination and successfully obtained 5th rank in Open Quota having secured 65.69%. However, he was arrayed as a private candidate.

According to him, IRT was established by the first respondent for conducting research, managerial and supervisory training and for conducting professional courses, subsequent to the announcement made by the Government on the Floor of the Assembly. For the benefit of the children of the employees of the STCs, IRT started the Automobile Research Oriented Engineering College. The employees of the STCs further represented to the Government to start a Medical College for the benefit of their children. The Government in the year 1988-89 announced that the IRT would start a Medical College at Perundurai in Erode District and that for the said purpose, the Ramalingam Tuberculosis Sanatorium, Perundurai, would be taken over by the Government along with the building and other infrastructural facilities and handed over to the IRT. Thus, the IRT, PMC and its Hospital are Public Sector Undertakings and Organisations under the control of the Government of Tamil Nadu. Several Doctors with specialities from various Government Hospitals were deputed to serve in PMC & Hospital. The Director of Medical Education has been issuing prospectus for admission to P.G. Diploma/Degree/MDS courses in the Government Medical/Dental Colleges in Tamil Nadu for the past several years and selecting the doctors serving in PMC as service candidates for admission to various post-graduate courses. If the petitioner is considered as service candidate, he would be placed in the third rank in the list of service candidates who had appeared for the entrance examination. On the other hand, if the petitioner is not considered so, he would be placed in 5th rank and it would be difficult to get admission for the higher speciality course. In that background, he approached this Court by way of a Writ Petition.

Counter affidavit was filed on behalf of the Selection Committee for Higher Speciality Courses, wherein, it is stated that

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the services of the Doctors in Perundurai IRT Medical College will not come under the Government Service. It is further stated that the said college is not a Government College and is a self financing private medical college. The definition in clause-61(3) of the prospectus is not applicable to IRT PMC because it is not run by local bodies such as Corporation, Municipality, Government of India Institution and does not come under the category of Public Sector Undertaking or Organisation under the control of Government of Tamil Nadu/Government of India. Further, the said College is not a Government/Government aided institution, coming under the control of Transport Department.

By Order dated 05.07.2006, learned single Judge, basing reliance on Clause-61(3) of the Prospectus for admission to the three year Higher Speciality Courses in the Tamil Nadu Government Medical Colleges, instructions issued by the Government, official capacity of the governing council members, various administrative reports and other G.Os., arrived at a conclusion that the Writ Petitioner is a service candidate and issued appropriate direction to treat him as service candidate. Questioning the said order; impleaded 5th respondent – A.Prabakaran, Dean, PMC, Government and others filed three writ appeals.

7. IRT Perundurai Medical College and Hospital Doctors and Teaching Staff Association, even as early as in 1997, filed W.P. No.4681 of 1997 for the issuance of a writ of mandamus as stated earlier.

8. Heard Mr. M.Sekar, Special Government Pleader for State; Ms.Kala Ramesh for PMC; Mr.R.Gandhi, learned Senior Counsel, Ms.Jebi Mather Hishan, learned counsel and Mr.V.Sankaranarayanan, learned counsel, for the respondents.

9. The only point for consideration in these Appeals and Writ Petition is as to whether Perundurai Medical College is one which is to be considered for the purpose of admission as a college coming under the control of the Government of Tamil Nadu.

10. In order to reckon a society/corporation/body as an agency or instrumentality or undertaking of the State, the test to be applied is as to whether it falls in the category of 'other authorities under the control of Government' within the meaning of Article 12 of the Constitution.

11. In Pradeep Kumar Biswas v. Indian Institute of Chemical Biology (2002 (5) SCC 111), the Supreme Court, after examining various Case Laws including Ajay Hasia's case, which we are discussing in the course of this Judgment, relating to 'authority under the control of the Government' in Article 12, in para 40 laid down multiple test as follows:-

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" 40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be – whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State. "

The multiple tests propounded by the Supreme Court in the above case law is the criterion to find out as to whether a particular registered society is an undertaking or instrumentality of the State.

12. In that background, the question to be answered is whether the Registered society in question, ie., IRT – PMC, is functionally, financially and administratively under the control of Government.

13. In Ajay Hasia vs. Khalid Mujib Sehravardi (1981 (1) SCC 722), a society registered under the Registration of Societies Act running the Regional Engineering College, which is sponsored, supervised and financially supported by the Government was held to be 'an authority under the control of Government' within the meaning of Article 12. In the said case, the funds to run the college was provided by State and Central Government. To adjudge whether a body is an instrumentality of the Government or not, the Apex Court laid down the following tests:-

" 1. If the entire share capital of the body is held by Government.

2. Where the financial assistance given by the Government is so large as to meet almost entire expenditure of the body.

3. It is a relevant factor if the body enjoys monopoly status which is conferred or protected by the State.

4. Existence of deep and pervasive control by the Government.

5. If the functions performed by the

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body are of public importance and closely related to governmental functions.

6. Specifically if a Department of Government is transferred to a corporation it would be a strong factor supportive of this inference of corporation being instrumentality or agency. "

14. Now, let us consider the case of both sides in the light of the multiple tests propounded by the Supreme Court in the above referred case laws.

15. Mr. R.Gandhi, learned Senior Counsel, pointed out that the IRT and PMC & Hospital are public Sector Undertakings and Organisations coming under the control of the Government of Tamil Nadu. It is brought to our notice that in the identity cards issued to the staff working in the Medical College and Hospital, the said aspect has been reflected. It is also brought to our notice that the Director of I.R.T., by Circular dated 30.5.1995, insisted that all the officers and staff members of the IRT and its wings should not perform foreign tours without obtaining prior sanction of the Government. Several Doctors working in other Government Colleges and Government Institutes/Hospitals were being sent to the PMC & Hospital on deputation basis.

16. On the other hand, learned Special Government Pleader, Mrs.Kala Ramesh and Ms.Jebi Mather Hishan vehemently contended that the service conditions relating to the Government servants are not applicable to the staff of Perundurai Medical College.

17. In the background of the rival contentions projected on either side, we carefully perused the materials placed before us particularly in respect of the character of the Institution. IRT Perundurai Medical College & Research Centre is one of the Medical Colleges in Tamil Nadu.

A. The details available in the Website medindia.com relating to PMC are as follows:-

" IRT Perundurai Medical College & Research Centre, Perundurai Sanatorium
University Tamilnadu DR.M.G.R. Medical University

Established in 1992

Address Erode Dist., Perundurai Sanatorium, Tamil Nadu,638053

Management Government

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Website
Email pmcrc@erd.tn.nic.in

Contact Person Dr.(Mrs.)P.Kanmani

UG Courses Available MBBS - 60 Seats, BDS, B Pharm
Bsc (Nursing) BPT/BOT

PG Courses Available

"

(emphasis supplied)

B. In the Policy Note 2005-2006 of Health and Family Welfare Department relating to Medical Education, Medical Institutions etc., it is noted,

	Colleges	Seats
IRT Medical College, Perundurai (Quasi Government College) - M.B.B.S.	1	60

(emphasis supplied)

C. There is no dispute that PMC & Hospital was formed by IRT, which is under control of the Transport Department, Government of Tamil Nadu. The document, viz., a letter from Director, IRT, to the Dean, PMC & Hospital, specifically mentions that IRT is under the control of Transport Dept. Govt. of Tamil Nadu, vide page No.8 of the typed set of papers filed under the caption 'List of Documents' by R-1 in WA No.924 of 2006.

D. The following details available from the Website of the Directorate of Medical Education (DME) are also relevant.

> " Out of 60 seats available in Perundurai Medical College run by the Road Transport of Govt. Selection Committee allots 40 candidates while the remaining seats are filled up by the management with the wards of the Transport Corporation employees.
>
> At present 11 Govt. Medical Colleges, 2 Private Medical Colleges, 1 Govt. Dental College and 7 Private Dental Colleges are functioning in the State under the Director of Medical Education. In addition Institute of Road Transport of the Govt. Transport Department is also running a Medical College at Perundurai. Forty hospitals are under the control of this Directorate. Every year, more

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than a thousand medical graduates and more than nine hundred medical post graduates, diploma and higher specialities graduates come out from the Govt. Medical Institutions after completing the courses. "

E. Even while calling for tenders in respect of certain works to be performed in the said Medical College (tender published in 'Dinakaran', Coimbatore Edition, dated 06.07.2006), it was issued under the caption

"தமிழ் நாடு அரசு
சாலை போக்குவரத்து நிறுவனம்"

ie., Government of Tamil Nadu, Institute of Road Transport...". The document available at page 13 indicates the same. Another tender notice which was published in Business Standard - Chennai Edition, dated 11.10.2005, at page 14 of the typed-set, reads as under:-

" GOVERNMENT OF TMAIL NADU
THE INSTITUTE OF ROAD TRANSPORT
PERUNDURAI MEDICAL COLLEGE
PERUNDURI, ERODE - 638 053.
..... "

F. While calling for qualified persons for the posts of Dean, Professor, Associate Professor/Reader, Assistant Professor, etc., in the Medical College and Hospital, the Director, IRT, Taramani, Chennai-113, has stated that the scale of pay and Dearness Allowance will be similar to Tamil Nadu Government Scales.

G. It is settled position that any Company, whether private or Government, is to be decided on the basis of a) Investment and share holdings and (b) Management. In PMC, all the Investments are made by the Government. Land and building for the college were provided by the Government. It is also relevant to note that in private colleges, admissions are done through their own system and not by open entrance examination. It is not in dispute that, in so far as PMC is concerned, admission is also done by the very same Selection Committee. 60% of the seats are filled by way of entrance and 40% reserved for Transport Employees.

H. The information available in the website 'indegene.com' under the caption 'Recognized Medical Colleges of Tamil Nadu' shows PMC as affiliated to Dr.M.G.R. Medical University; year of inception as 1985; under the management of 'Government'. (vide page 20 of the list of documents)

18. It is relevant to point out that when petitioner - Dr.M.Elango applied as a service candidate as against the five seats earmarked for service category, his application was routed though the Director, IRT, on 26.04.1995. The Director, in his

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letter dated 26.4.1995, indicated that the PMC run by the IRT is neither a Government Institution nor a private Institution, but has all the characteristics of a 'government controlled institution'. (emphasis supplied)

19. In the prospectus of the Tamil Nadu Professional Courses Medical/Dental/Paramedical for the year 1995-96, Annexure II shows the names of the Government Medical Colleges, and Perundurai Medical College is one among the ten Government Medical Colleges mentioned therein. Notification of Dr.M.G.R. University issued in Newspaper also shows that PMC is one of the Colleges considered as Government Medical Colleges. It is brought to our notice that the Writ Petitioner was required to execute a bond to serve in the Institution ie, PMC, for a period of 10 years after completion of the course, which is similar to the conditions being imposed in government service. The particulars furnished also show that Doctors working in other Government Medical Colleges were deputed to work in PMC, indicating as to the control of the State Government over the said college.

20. We make it clear that what is to be considered and decided here is as to whether the Government has pervasive control over PMC or not? We emphasise and reiterate that, in that background, the case of the parties and discussion of the court relate only to the sole aspect, viz., consideration of the members of the petitioner association as service candidates for the purpose of selection to PG Diploma/Degree/MDS courses in Government Medical/Dental Colleges in Tamil Nadu. We enumerate the vital aspects here-under in a summarised form, which would answer the question in a vivid manner.

Clause 61 (3) (c) of the Prospectus (2006-2007 Session) for admission to 3 year Higher Speciality Courses in Tamil Nadu Government Medical Colleges, issued by the Selection Committee, D.M.E., Chennai-10, specifies as follows:-

> " 61. The following categories of Medical Officers will be treated as Service Candidates for the purpose of allotment of Seats:-
>
> .....
>
> (3) Medical Officers serving in:-
>
> (c) Public sector undertakings and organisations under the control of Government of Tamil Nadu / Government of India in Tamil Nadu." (emphasis supplied)

We carefully examined the status of the PMC run by the IRT in the light of the multiple tests and tenets laid down by the Supreme Court in Ajay Hasia and Pradeep Kumar Biswas. In a given case, it would have to be decided on a consideration of the relevant factors whether the IRT is an instrumentality or agency of the Government so as to come within the meaning of the expression 'authority' in

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Article 12. The answer must obviously be affirmative if we have regard to the Memorandum of Association and Rules of the Society. First of all, the Society came into existence after proper announcement made by the Government at the Floor of the Assembly. It is not as if that some individuals took initiatives to get the society registered. The Governing Council of the society is dominated by high ranking officials of the State Government viz., Secretary to Government, Transport Department, Commissioner of Technical Education, Joint Director ((BPE) Finance Department) etc. The role played and being played by the officials can, at no stretch of imagination, be said that they act so in their personal capacity and not as government officials. As could be seen from the Rules of the Society, it is those officials (Council) who shall cause proper books of accounts to be kept in respect of all sums of money received and expended by the Society. They alone shall prescribe the manner in which Balance sheet shall be prepared. It is specifically provided that the accounts of the society shall have to be submitted to the Government. Clause-9(a) of the Rules stipulates that the Chairman is to be nominated by the Government. Thus, the admission and administration are conducted in the manner prescribed by the Government, which explicitly exposes the pervasive dominance and control of the Government over the Society. The most vital aspect is with regard to the powers of the Council as stated in clause-21 of the Rules, which prescribes that the Council shall have the powers and authority to do things which are conducive to and expedient to the fulfilment of the objectives of the Society in general among other affairs subject to the general controls and directions of the Government of Tamil Nadu (emphasis supplied). Rule-28 makes it clear that dissolution and adjustment of affairs could be done only with the approval of the Government by a Special Resolution. These aspects would efface a sticking doubt, if any, in one's mind regarding the control of the Government involved.

If we trace the history of the PMC, the same was created by the issuance of G.O. Ms. No.871, Transport Department, dated 28.08.1989. The Ramalingam Tuberculosis Sanatorium was taken over by the Government to house the Medical College and Hospital. When the Government itself caused budgetary allocation for about Rs.20 Crores and, even as on date, top ranking Government Officials remain to be the Governing Council of the Society which runs the PMC, is it not a travesty to say that PMC is purely a private college and that the Government have no iota of control over the affairs thereof? Further, when IRT is shown to be 'under the control of Transport Department of the Government of Tamil Nadu', the Government cannot come forward with an obscure version disowning the status of the State Transport Corporations and denying its control over them.

AS pointed out earlier, Doctors working in other Government Hospitals, who have expertise on scarce disciplines, being sent to PMC on deputation basis. I.D. Cards issued to the

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staff members show PMC to be a public Sector Undertaking under the control of the Government of Tamil Nadu. Further, the staff members were directed not to perform foreign tours without obtaining prior sanction of the Government. Thus, once it is established that the Government has/having control over the PMC and IRT, then, it is automatic that the Doctors serving therein should be considered for selection under Service quota for PG Diploma/Degree courses. We agree with the stand of the Government/DME/Selection Committee that PMC is not a pure Government Medical College, hence, its staff members cannot be treated on par with those of other Government owned institutes in the matter of service rules and regulations, however, it can never be said that the Government has no control over it and thereby what is legitimately entitled to the service candidates, viz., quota in admission to Higher Speciality Courses, cannot be deprived of. We are also told that as far as PMC is concerned, no private share is involved and, all along, the government has been exercising its pervasive control over the Institution. When the society and the college & Hospital came into existence after proper announcement made by the Government in the Floor of the Assembly and the Government having been the patron for all the initiatives and for the complete formation of the Institution, to stray from the original stand and to state that the Government is in no way concerned with the PMC or IRT is a hard pill to swallow. Thus, it is crystal clear that the Institution is financially, functionally and administratively dominated by the control of the Government and such control is pervasive as could be seen from the various instances highlighted above. The tests propounded by the Apex Court in Pradeep Kumar Biswas and Ajay Hasia have been well satisfied in the present case.

21. Accordingly, WP No.4681 of 1997 is allowed. Direction is issued to the respondents to treat the members of the petitioner/association as service candidates for the purpose of selection and admission to PG Diploma/Degree/MDS courses. Writ Appeal Nos.271 of 1996, 924, 1009 and 1026 of 2006 stand dismissed. No costs. Connected Miscellaneous Petitions are closed.
JI.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Director of Medical Education, Chepauk, Madras-5.

2. The Secretary, Government of Tamil Nadu, Health Department, Fort Saint George, Madras-9.

3. The Secretary, P.G. Selection Committee, Kilpauk Medical College Hospital, Sabarmathi Hostel, Kilpauk, Madras-10.

4. The Dean, Perunthurai Medical College, Perunthurai. Perunthurai Erode District.

5. The Director, Institute of Road Transport Corporation., Perunthurai

6. The Secreary,
Selection Committee for
Higher Speciality Courses,
M.Ch.Surgical Gastroenterology,
162, E.V.R. Periyar High Road,
Kilpauk, Chennai-10.

7. The Secretary to Government of Tamil Nadu
Health and Family Welfare Department,
Fort Saint George, Chennai 9.

8. The Secretary,
P.G. Selection Committee,
Kilpauk Medical College Hospital,
Sabarmathi Hostel,
Kilpauk, Madras-10.

+3ccs to the Government Pleader sr nos. 54206, 54207 and 54326
+ 1cc to Mr. G.G. Narendhiran, Advocate sr no. 53935
+one cc to M/s. Gladys Daniel, Advocate sr no. 53773
+4ccs to M/s. Kala Ramesh Advocate sr no. 53759

JE(CO)
NM(07.12.2006)

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Pre Delivery Common Judgment in WA Nos. 271/96, 924, 1009 & 1026 of 2006 and WP No.4681 of 1997 and connected Misceln. Petitions.

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